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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

18 ORACLE AMERICA, INC.,

19 Plaintiff,

20 v.

21 GOOGLE INC.,

22 Defendant.

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Case No. 3:10-cv-03561-WHA

**DECLARATION OF EUGENE M. PAIGE
IN RESPONSE TO AUGUST 16, 2011
ORDER TO SHOW CAUSE**

Judge: Hon. Donna M. Ryu

Date Comp. Filed: October 27, 2010

Trial Date: October 31, 2011

1 I, Eugene M. Paige, state:

2 1. I am a partner with the law firm of Keker & Van Nest LLP, counsel to Google
3 Inc. in the present case. I submit this declaration in response to the Court's August 16, 2011
4 Order to Show Cause As To Why Court Should Not Deny Defendant's Motion to Compel
5 [Docket No. 280] As Untimely Filed. I make this declaration based on my own personal
6 knowledge. If called as a witness, I could and would testify competently to the matters set forth
7 herein.

8 2. On August 5, 2011, the parties worked diligently to prepare several joint letters to
9 the Court setting forth their positions on various discovery disputes that they wished to submit to
10 the Court for resolution.

11 3. One of these joint letters dealt with issues that Google had with Oracle's
12 preparation and presentation of a witness in response to Topic 4 of its 30(b)(6) notice to Oracle
13 ("the Topic 4 Letter"). The Topic 4 Letter was the letter filed in redacted form at Docket No.
14 280.

15 4. At approximately 12.41 p.m. Pacific Time on August 5, 2011, counsel for Google,
16 Mark Francis, forwarded to counsel for Oracle a draft of Google's position on the Topic 4 Letter.
17 Attached hereto as Exhibit 1 is a true and correct copy of the cover email that accompanied that
18 draft. As can be seen from Exhibit 1, both parties had been exchanging copies of other joint
19 letters over the course of the day.

20 5. At approximately 11.31 p.m. Pacific Time on August 5, 2011, counsel for Oracle,
21 Beko Reblitz-Richardson, forwarded to counsel for Google a draft of the Topic 4 Letter that
22 contained Oracle's position on the issues raised therein. Attached hereto as Exhibit 2 is a true
23 and correct copy of the cover email that accompanied the draft. As can be seen from Exhibit 2,
24 counsel for Oracle requested another review of the draft before filing if Google made any
25 revisions to its portion of the letter.

26 6. In the hours leading up to Google's receipt of the draft of the Topic 4 Letter with
27 Oracle's positions added, counsel for Google had diligently requested that Oracle provide its
28 portion of the various joint letters. Several of these requests are reflected in the email chain that

1 is attached as Exhibit 2, including Bruce Baber's request at approximately 8.17 p.m. Pacific
2 time; Dan Purcell's request at approximately 9.57 p.m. Pacific time; and Christa Anderson's
3 request at approximately 11.18 p.m. Pacific time.

4 7. From the time at which Google received Oracle's input for the Topic 4 Letter
5 forward, counsel for Google, Cheryl Sabnis, was preparing and filing various documents in
6 connection with the various filings that Google was making that evening on the joint letters.
7 Attached hereto as Exhibit 3 is a true and correct copy of a notice of electronic filing reflecting
8 the filing of a joint letter that Ms. Sabnis filed slightly before midnight, at 11.51 p.m. on August
9 5, 2011.

10 8. At approximately 12.16 a.m. on August 6, 2011, I sent an email to counsel for
11 Oracle, Beko Reblitz-Richardson, noting two minor redlines that had been added to the joint
12 letter in response to the material that Oracle had supplied less than a hour previously. Attached
13 hereto as Exhibit 4 is a true and correct copy of the cover email that accompanied that further
14 redline.

15 9. At approximately 12.24 a.m. on August 6, 2011, counsel for Oracle responded to
16 my email that was Exhibit 4 providing consent for Google to file an administrative motion to seal
17 with respect to the letter. Attached hereto as Exhibit 5 is a true and correct copy of that email.

18 10. At approximately 12.29 a.m., counsel for Google, Cheryl Sabnis, filed the
19 administrative motion to seal the Topic 4 Letter. Attached hereto as Exhibit 6 is a true and
20 correct copy of a notice of electronic filing reflecting the filing of an administrative motion to
21 seal that Ms. Sabnis filed slightly after midnight, at 12.29 a.m. on August 6, 2011. I understand
22 that Ms. Sabnis requested that her assistant lodge an unredacted copy of the Topic 4 Letter with
23 Judge Ryu's Chambers prior to noon on Monday, August 8, 2011, which was the first business
24 day after the filing.

25 11. The Topic 4 Letter was not the only joint filing that occurred after midnight on
26 August 5, 2011. The joint letter regarding the document prepared by Tim Lindholm, upon which
27 the Court has set a hearing on August 25, 2011 (see Doc. No. 307), was filed on or about 12.08
28 a.m. on August 6, 2011. Attached hereto as Exhibit 7 is a true and correct copy of a notice of

1 electronic filing reflecting the filing of the joint letter regarding this issue slightly after midnight,
2 at 12.08 a.m. on August 6, 2011.

3 12. Because of the diligence shown by the parties in having the Topic 4 Letter, and
4 other joint letters raising discovery disputes, filed at the end of the day on August 5, 2011,
5 Google respectfully requests that the dispute raised in the Topic 4 Letter be heard and decided on
6 its merits.

7 13. I have discussed this Order to Show Cause with counsel for Oracle, Beko Reblitz-
8 Richardson, who has informed me that Oracle does not assert and does not intend to argue that
9 Google's motion brought in the Topic 4 Letter was untimely.

10 I declare under penalty of perjury that the foregoing facts are true and correct and that
11 this declaration was executed at San Francisco, California on August 23, 2011.

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13
14 By: 

15 EUGENE M. PAIGE
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